U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33759684

Date: SEP. 19, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a marketing specialist, seeks employment-based second preference (EB-2) classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not qualify for the EB-2 classification and did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

The record shows that the Petitioner's proposed endeavor is to operate his retail consultancy, advisory, and training company in Florida. In our decision dismissing the appeal, while we reserved our analysis of the three *Dhanasar* prongs, we explained why the Petitioner failed to demonstrate his eligibility for the underlying EB-2 classification. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

In support of his motion to reopen, the Petitioner resubmits previously submitted documents along with a brief. The Petitioner requests that we reopen and reconsider our decision based on these submissions. The Petitioner, however, does not present any new facts and does not submit any new evidence. The Petitioner rather highlights his evidence and contends that he has established five of the six initial regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner further affirms his proposed endeavor's substantial merit and national importance and argues that he has demonstrated a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

Although we acknowledge the Petitioner's assertions and documents, the Petitioner has not established new facts relevant to our appellate decision that would warrant reopening of the proceedings.

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion to reconsider, the Petitioner does not explain how we erroneously dismissed his appeal. The Petitioner also does not explain how our appellate decision was based on an incorrect application of law or USCIS policy and that our decision was incorrect based on the evidence in the record at the time of the decision.

Although the Petitioner has submitted documents in support of the motion to reopen, the Petitioner has not offered new evidence or facts on motion to overcome the stated grounds for dismissal in our appellate decision. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, we will dismiss the Petitioner's motion to reopen and motion to reconsider. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.